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11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 **“IN RE: VOLKSWAGEN ‘CLEAN**  
14 **DIESEL’ MARKETING, SALES**  
15 **PRACTICES, AND PRODUCTS**  
16 **LIABILITY LITIGATION**

CASE NO.: **MDL No. 2672 CRB (JSC)**

**PLAINTIFFS MATTHEW W. SMITH,  
BERNADETTE MEYLER, MARTHA SAFRA  
AND DANIEL MCGARRY’S**

17 THIS DOCUMENT RELATES TO:

18 ALL ACTIONS  
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**RECOMMENDATION FOR SPECIAL  
SETTLEMENT MASTERS SUBMITTED  
PURSUANT TO PRE-TRIAL ORDER NO. 1**

Pursuant to this Court's Pre-Trial Order No. 1 filed December 9, 2015 (Dkt. No. 2), the Plaintiffs who are represented by Cotchett, Pitre & McCarthy respectfully suggest for the Court's consideration the appointment of a **group** of Special Settlement Masters for a fully coordinated approach to an efficient and prompt resolution of the MDL action.

Due to the size of this MDL action, we believe that the interests of the parties, the Court and the public would best be served by appointing a **group** of former or retired Judges to serve as Special Settlement Masters to handle the settlement in a coordinated fashion due to the various potential sub-issues of damages. This Court used this approach in the *Bextra* cases to great benefit and many other MDL judges have used more than one Settlement Master in complex cases with sub-groups of plaintiffs.

The settlement process in this case will need to consider:

1. The number of vehicles (there are over 500,000 effected vehicles in the United States and over 11 million worldwide);
2. The ongoing governmental investigations of different vehicles;
3. The laws of the different jurisdictions involved;
4. A Defendants who is a foreign corporation;
5. The process of a proposed buy-back of various different models of cars;
6. The damages by the various different sub-classes such as private consumers, dealers, lease operators, and public entity owners, including various ages and models of the affected cars and valuations.

Although there are many issues to resolve in a settlement process, Volkswagen has already admitted that it intentionally installed software in certain of its diesel vehicles to evade United States and foreign emission standards. The question then is not whether the defendants are liable, but the extent of their liability and the remedies the vehicle owners are entitled to receive. It is important to see if a fair resolution will be achieved at an **early stage of this litigation** so as not to prolong the process to the determinant of the owners of the affected vehicles.

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Cotchett, Pitre & McCarthy respectfully suggests that the Court put together a group of former jurists who have the ability to work collaboratively with each other and the parties to create a synergy to develop an effective and efficient procedure to resolve this case. The key to this case is the efficiency in the resolution to make this case a model on how to handle one of the most complex MDL cases in history.

The Court has many excellent people from which to form this group. As the Court knows, Chief U.S. District Judge Gerald E. Rosen of the Eastern District of Michigan named former Bankruptcy Judge Steven Rhodes and former District Judge Layn Phillips as settlement mediators for cases pending in his judicial district, and U.S. District Judge Jose Linares from the District of New Jersey named Judge Phillips and former District Judge Faith Hochberg as settlement mediators for his judicial district. At the request of this Court, plaintiffs' counsel have and will suggest different mediators.

Recommended to date are: **Kenneth Feinberg, Hon. Edward A. Infante (Ret.) and Hon. Fern Smith (Ret.)**. Cotchett, Pitre & McCarthy believes that **each** of these people should be considered by the Court as outstanding members of a coordinated group of mediators having worked with each of the named individuals.

In addition, Cotchett, Pitre & McCarthy suggests that the Court consider the appointment of the **Hon. Charles Renfrew (Ret.)**, the **Hon. Vaughn Walker (Ret.)**, and the **Hon. Rebecca Westerfield (Ret.)** for the following reasons:

1. **Hon. Charles B. Renfrew (Ret.)**: Judge Renfrew is a retired Judge of this District who has extensive mediation experience. He also has wide-experience in international legal issues. Since 2001 he has been a member of ADR Chambers International, the leading organization that specializes in International Arbitration and Mediation. He served as a Deputy Attorney General of the United States and was instrumental in formulating and implementing Departmental policies and programs in civil litigation. He has a great understanding on how governmental investigations operation and corporate policies and procedures having served as Vice President and counsel for Chevron Corporation from 1983-1993. This makes him an excellent choice to be part of a mediation group.

2. **Hon. Vaughn Walker (Ret.)**: Judge Walker is the former Chief Judge of this District who has extensive mediation experience in complex matters involving software. While a judge, he handled MDL 06-1791, cases involving software surveillance programs and number of cases involving various intentional misuse of software. He currently teaches Complex Litigation at University of California, Berkeley Law.

3. **Hon. Rebecca Westerfield (Ret.)**: Judge Westerfield is a former Judge of a Circuit Court in Kentucky who has extensive mediation experience. She has conducted mediations involving international laws, multiple disputes with various European manufacturers, claims over Central American energy sources; and disputes among foreign partnerships. She has been a presenter at the International Summer School on Business Mediation, Admont, Austria.

Dated: December 10, 2015

Respectfully submitted,

**COTCHETT, PITRE & McCARTHY, LLP**

By:                     /S/ NANCY L. FINEMAN                      
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**PROOF OF SERVICE**

I am employed in the County of San Mateo; I am over the age of 18 years and not a party to the within cause. My business address is the Law Offices of Cotchett, Pitre & McCarthy, LLP., San Francisco Airport Office Center, 840 Malcolm Road, Suite 200, Burlingame, California, 94010. On this day, I served the following document(s) in the manner described below:

**PLAINTIFFS' RECOMMENDATION FOR SPECIAL SETTLEMENT MASTERS  
SUBMITTED PURSUANT TO PRE-TRIAL ORDER NO. 1**

  X   **VIA ECF:** I caused the aforementioned documents to be filed via the Electronic Case Filing (ECF) system in the United States District Court for the Northern District of California, on all parties registered for e-filing in Case Number Case No. MDL No. 2672 CRB (JSC); 3:15-md-02672-CRB. Counsel of record are required by the Court to be registered e-filers, and as such are automatically e-served with a copy of the documents upon confirmation of e-filing.

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct. Executed at Burlingame, California, on December 10, 2015.

          /S/ NANCY L. FINEMAN            
NANCY L. FINEMAN